IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 2160 of 2007

Date of decision: 27.12.2007

Ram Lal **..Petitioner**

Versus

State of H.P. and others **..Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. J.L.Bhardwaj, Advocate

For the Respondents: Mr. M.S.Chandel, Advocate General, with Mr. R.M.Bisht, Deputy Advocate General.

Per Deepak Gupta, J. (Oral)

The petitioner by means of this writ petition has prayed that the license fee fixed by the respondents n respect of IMFS of L-14 at Ghyal in Sub Tehsil Namhol, Tehsil Sadar, District Bilaspur be quashed and set aside and that the respondents be directed to review the license fee for the for the said depot.

As per the liquor policy for the year 2007-2008 the State of Himachal Pradesh did not auction the liquor

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

vends. The allotment fee for each vend was fixed and applications were invited from the public for allotment of the vends. Fee of Rs. 28,35,000/- was fixed before allotment for the vend in question. The petitioner was well aware that this is the fee fixed. Knowing fully well that this is the fee fixed, he applied for allotment of the vend. The allotment was made as per draw of lots. The petitioner being successful in the draw of lots was allotted the vend in question. 3 months after the allotment of the vend, the petitioner made a representation that since the sale of liquor is not as per his expectations, the fee should be reduced.

Learned counsel for the petitioner has contended that the fee should have been fixed keeping in view the sale of liquor in the previous year. He has relied upon Rule 36 sub rule (24) of the H.P. Liquor License Rules, 1986. The said rule reads as follows:-

> "(24) The Collector shall forward to the Financial Commissioner statements in Forms M-14 and M-14-A, showing the locality of each shop sold, the probable sales during the year, the lowest fee determined under clause (1) of this rule, the name of the persons to whom the shop has been sold, the amount for which it has been sold compared with that of the preceding year, and in any case in which

> the shop has not been sold for the highest bid a short statement of the reason, for rejecting it. If no intimation to the contrary is received within three weeks or by 31st March whichever is earlier, the Collector may assume that the Financial Commissioner has accepted his proposals."

A perusal of this sub rule clearly shows that the Collector has to forward to the Financial Commissioner details of the liquor vends alongwith the amount of probable sales of each vend. This rule also postulates rejection of the highest bid in which case the Collector has to give reasons for rejecting the highest bid. On consideration of this rule we find nothing in this rule which would support the contention of the petitioner that the allotment fee has to be fixed keeping into consideration the report of the Collector.

In a case, like the present one, the parties have entered into a commercial contract with open eyes. The petitioner was well aware that the allotment would be made subject to payment of the fixed fee. It was for him to have decided whether this fee is exorbitant or not. No body forced him to take part in the allotment process. He has willingly taken part in the process. Now he cannot turn around and say that fee is on the higher side.

In view of the above discussion there is no merit in this petition which is accordingly dismissed.

(Deepak Gupta), J.

December 27, 2007(K) (V. K. Ahuja), J.